

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**PAUL ROHNER**

**v.**  
**PATRICIA BEETS, ET AL.;**

**PATRICIA BEETS REVOCABLE  
LIVING TRUST**

**RESPONDENT,**

**APPELLANT,**

**APPELLANT.**

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DOCKET NUMBER WD75327

DATE: April 9, 2013

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Appeal From:

Jackson County Circuit Court  
The Honorable James F. Kanatazar, Judge

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Appellate Judges:

Division Three: Cynthia L. Martin, Presiding Judge, Joseph M. Ellis, Judge and Gary D. Witt,  
Judge

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Attorneys:

Cory L. Atkins and Mark M. Haddad, Kansas City, MO, for respondent.

George E. Kapke, Lee's Summit, MO, for appellants.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
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**PAUL ROHNER,**

**RESPONDENT,**

**v.**

**PATRICIA BEETS, ET AL.;**

**APPELLANT,**

**PATRICIA BEETS REVOCABLE  
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**APPELLANT.**

No. WD75327

Jackson County

Before Division Three: Cynthia L. Martin, Presiding Judge, Joseph M. Ellis, Judge and Gary D. Witt, Judge

Patricia S. Beets and the Patricia S. Beets Revocable Living Trust appeal the trial court's entry of a judgment awarding title by adverse possession to a triangular sliver of land between two residential lots to Paul Rohner. Beets argues that Rohner's possession of the disputed sliver of land was not hostile for the requisite ten year limitations period because she gave Rohner permission to cross her property.

**Affirmed.**

Division Three holds:

1. To acquire title by adverse possession, possession must be hostile, actual, open and notorious, exclusive, and continuous for a period of ten years. The party claiming ownership by adverse possession has the burden of proving each element of the claim by a preponderance of the evidence.

2. Because Beets challenges only Rohner's establishment of hostile possession for the requisite ten year limitations period, that is the only element we need address.

3. Possession is hostile if it is antagonistic to the claims of all others. A claimant must occupy the land with the intent to possess it as his own. The occupancy must be in defiance of, rather than in subordination to, the rights of others. The claimant need not intend to take away something that belongs to another or be indifferent as to the facts of the legal title. Even if a claimant mistakenly believes he had title and occupied the land as his own, the hostile element is satisfied.

4. A permissive use will not support a claim of adverse possession because hostility is lacking. If an occupier secures permission to possess land, the occupier does not possess in defiance of, but rather in subordination to, the rights of the owner, the antithesis of hostile possession.

5. Whether permission was secured to use land in dispute is a factual determination, involving the credibility of witnesses which should be resolved by the trier of fact.

6. Beets does not contest the trial court's factual finding that her consent permitting Rohner to "cross her lot" to more readily access and replace a retaining wall previously built by Rohner on a part of Beets's lot was not intended by either Rohner or Beets to constitute permission to possess the land in dispute.

7. Beets instead argues that the trial court committed legal error because her general grant of permission to cross her lot by reference to the lot number constituted an exercise of dominion and control over *all* land within the actual legal boundaries of the lot, destroying Rohner's hostile use of the disputed sliver of land within the lot as a matter of law. Beets contends that when permission is extended by broad reference to a legal tract or platted lot, the fact-finder must conclude as a matter of law that hostility is defeated as to any use within the legal boundaries of the broadly referenced tract, without regard to contrary evidence of the parties' intent.

8. We decline to accept Beets's invitation to announce a bright line rule of law characterizing an owner's grant of permission by broad reference to a legal tract as sufficient to defeat hostility for every use within the actual boundaries of the tract. Such a rule would decouple the antithetical relationship between permissive use and hostile use by requiring the fact-finder to ignore evidence suggesting that the parties did not reasonably believe the permission applied to the land in dispute. We reaffirm the longstanding principle that for a permissive use to defeat hostile possession, the fact-finder must determine from the evidence whether the permission was intended to apply to the land in dispute. This is not a determination that can be made as a matter of law. It is a determination that must be made based on the peculiar facts and circumstances of each case.

9. The trial court did not err in concluding that Rohner did not seek, and Beets did not extend, permission to use the land in dispute. The trial court did not err in concluding that Rohner established hostile possession of the disputed land for a continuous ten year period of time.

Opinion by Cynthia L. Martin, Judge

April 9, 2013

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